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NOT FOR PUBLICATION

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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Kingman Airport Authority,

No. CV-17-08260-PCT-JJT

10 Plaintiff,

**ORDER**

11 v.

12 City of Kingman,

13 Defendant.  
14

15 At issue are Plaintiff Kingman Airport Authority's ("KAA") Motion for a New  
16 Trial and Motion for Leave to File First Amended Complaint (Doc. 28, Mot.), to which  
17 Defendant City of Kingman ("Kingman") filed a Response (Doc. 29, Resp.) and KAA  
18 filed a Reply (Doc. 30, Reply). KAA has also filed an Emergency Request for Expedited  
19 Decision (Doc. 31).

20 In its Complaint (Doc. 1, Compl.), KAA brought claims under the Contracts  
21 Clauses of the United States and Arizona Constitutions, seeking among other things a  
22 permanent injunction to preclude Kingman from condemning KAA's leasehold interest in  
23 the Kingman Airport. The Court granted Kingman's motion to dismiss KAA's claims  
24 because the claims—specifically, the invocation of the Contracts Clauses to try to enforce  
25 the terms of the Lease entered into between KAA and Kingman and prevent Kingman  
26 from condemning KAA's leasehold interest in any manner—violated the reserved powers  
27 doctrine. (Doc. 26, Order.) The Court thus entered Judgment (Doc. 27) and closed this  
28 case.

1 Four days after KAA filed this action, Kingman filed a parallel action in Arizona  
2 state court, which KAA removed to this Court. (Case No. CV-17-08272-PCT-JJT.) In  
3 that case, the Court granted Kingman's Motion to Remand for largely the same reasons  
4 as the Court dismissed this case. Moreover, in the Orders in both cases, the Court  
5 recognized that KAA would be able to raise its defenses to Kingman's attempted  
6 condemnation of KAA's leasehold interest in state court. (*E.g.*, Order at 7-8.)

7 KAA then filed the present Motions under Federal Rules of Civil Procedure  
8 59(a)(1)(B) and 15(a)(2), asking the Court to vacate its Judgment and allow KAA to  
9 amend its Complaint to seek the enforcement of the Lease and compensation for any  
10 condemnation of KAA's leasehold interest instead of an injunction preventing Kingman  
11 from condemning the leasehold interest in any manner, as KAA originally sought. (Mot.  
12 at 1; Doc. 28-1, Proposed First Am. Compl.) Kingman opposes reviving this case because  
13 (1) KAA had an opportunity to amend its Complaint after Kingman filed its Motion to  
14 Dismiss, but failed to do so; (2) denying KAA relief from the judgment supports the  
15 policies of deterring plaintiffs from using a court "as a sounding board to discover holes  
16 in their arguments" and the finality of judgments; and (3) KAA has not shown that its  
17 substantial rights have been affected, as required for the Court to vacate its judgment  
18 under Federal Rule of Civil Procedure 61. (Resp. at 1-6.)

19 The Court agrees with Kingman that KAA had an opportunity to amend its  
20 Complaint after Kingman raised the reserved powers doctrine issue in its Motion to  
21 Dismiss, but did not so amend. More importantly, KAA has not shown that its substantial  
22 rights have been affected by the Court's judgment. As Kingman points out, the proposed  
23 recast Complaint does not change the Court's conclusion that, under the reserved powers  
24 doctrine, Kingman's act of condemnation in and of itself cannot contravene the Contracts  
25 Clause. Enforcement of the terms of the Lease as well as defenses to Kingman's  
26 attempted condemnation of KAA's leasehold interest are matters of state law that KAA is  
27 presumably raising in the ongoing state court proceeding.<sup>1</sup> The Court must thus conclude

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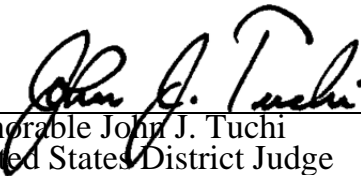
28 <sup>1</sup> KAA's Emergency Request for Expedited Decision indicates that the state court

1 that its Judgment does not affect KAA's substantial rights. In the alternative, viewed  
2 through the lens of Rule 59(e), KAA does not succeed in identifying the "highly unusual  
3 circumstances" required to obtain relief from the Court's judgment. (*See* Reply at 2  
4 (citing *Ferris v. City of San Jose*, 2013 WL 1120805, at \*2 (9th Cir. 1999)).)

5 IT IS THEREFORE ORDERED granting Plaintiff's Emergency Request for  
6 Expedited Decision (Doc. 31).

7 IT IS FURTHER ORDERED denying Plaintiff's Motion for a New Trial and  
8 Motion for Leave to File First Amended Complaint (Doc. 28). This case remains closed.

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10 Dated this 9th day of March, 2018.

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13 Honorable John J. Tuchi  
14 United States District Judge  
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action has proceeded and the state court has set a hearing for March 21, 2018. (Doc. 31.)